SUPREME COURT, U.S.

No. 1540

Supreme Court, U.S.
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In the Supreme Court of the United States

FRANK BERZANSKIS,

Petitioner,

vs.

RICHARD J. DALEY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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No.

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RICHARD J. DALEY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Frank Berzansksis, petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois, entered in this case Jan. 25, 1971.

OPINION BELOW

The opinion of the Supreme Court of Illinois is not yet reported. (The opinion is appended herein as Appendix A.) The opinion of the Circuit Court of Cook County consists of a signed order. (See Appendix B.)

JURISDICTION

The judgment of the Court below was entered January 25, 1971 (Appendix C). Rehearing was not sought. Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED FOR REVIEW

1. Once a court has entered an order suppressing evidence, can that same evidence later be used in an administrative proceeding to revoke the liquor license held by the object of the illegal search?

2. Is stolen property, properly suppressed in a criminal proceeding because of an invalid search warrant, admissible at a subsequent liquor license revocation hearing?

3. When a citizen applies for and receives a liquor license, does he waive the right to later assert his Fourth Amendment rights at a license revocation hearing?

Constitutional Provisions and Statute Involved

1. The Fourth Amendment, United States Constitution.

2. The Fourteenth Amendment, United States Constitution.

3. The statute relied on in part by the Illinois Supreme Court, Smith-Hurd Illinois Annotated Statutes, Chapter 43, Section 190 (1934), which provides as follows:

§ 190. *Search warrant*—Complaint, form and requisites—Verification

Whenever complaint is made in writing, verified by affidavit to any judge of any court having cognizance of criminal offenses, that complainant has just and reasonable grounds to believe and does believe that alcoholic liquor is manufactured, possessed kept for sale, used or

transported, in violation of this Act, or any mash, still or other property designed for the manufacture of alcoholic liquor is possessed in any premises which are not licensed hereunder, (particularly describing and designating such property in said complaint), the judge may issue a search warrant as hereinafter provided; provided, however, no search warrant shall be necessary for the inspection or search of any premises licensed under this Act, and provided, further, that no search warrant shall be issued for the search of premises in use for residence purposes. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process.

Each complaint shall be substantially in the following form:

State of Illinois, }
County of Cook. } ss.

Complaint for Search Warrant.

The complaint and affidavit of ——— (name of complainant), of ——— (his residence), made before ——— (name of officer) one of the ——— (official title of officer), in and for said ——— (county, city or village, as the case may be), on this ——— day of ——— 19—, being first duly sworn, upon his oath says: That he has just and reasonable grounds to believe, and does believe that alcoholic liquor is now unlawfully (manufactured possessed, used, disposed of or kept for sale, or any mash, still or other property designed for the illegal manufacture of alcoholic liquor is possessed therein, as the case may be), to-wit: At and within a certain ——— (here describe the house, building, premises, boat, vehicle, receptacle or other place to be searched, with particulars as to the location sufficiently to identify it, stating the name of the person occupying the same, if known), in the ——— (city, village or town of) ———, in the county and state aforesaid; that the following are the reasons for his belief, to-

wit ——— (here insert the facts upon which such belief is based). Wherefore he prays that a search warrant may issue according to law.

_____

_____

(Signature of complainant.)

Subscribed and Sworn to before me this —— day of —— 19—.

_____

(Name of officer.)

_____

(Official title of officer.)

STATEMENT

On August 4, 1966, officers of the Cook County Sheriff's Police Department entered Frank Berzanskis' premises.

They were armed with a search warrant. (See Appendix D for the search warrant and supporting affidavit.)

In the course of the search, items of personal property were seized. Berzanskis was charged in the Circuit Court of Cook County with the offense of Theft.

On September 21, 1966, Berzanskis filed a Motion to Quash the warrant, alleging fatal defects under the Fourth and Fourteenth Amendments to the United States Constitution.

The Motion to Quash the warrant was sustained and the court entered an order suppressing all evidence seized in the search. The case then was dismissed by the State. No appeal was taken.

That ended the State's efforts to proceed criminally against Berzanskis. But part of the premises searched consisted of a tavern, and on January 16, 1967 Berzanskis

was notified Chicago's Local Liquor Control Commissioner would try to revoke his liquor license. The charges against Berzanskis consisted solely of alleged possession of stolen property on August 4, 1966. (Appendix E is the Notice of Hearing.)

The property listed by the Commissioner was the same property previously suppressed in the Circuit Court.

At the beginning of the license revocation hearing counsel for Berzaniskis urged the position taken throughout the proceedings below: evidence suppressed on Fourth Amendment grounds could not be used in the revocation proceeding. (See Appendices F and G for Berzanskis' statement and the motion filed at the beginning of the administrative proceeding.)

Berzanskis raised his Fourth Amendment objection to use of the property by the Commissioner throughout the administrative hearing (e.g., Appendix H).

In addition to the licensed tavern, the building named in the warrant and searched by sheriff's deputies housed a grocery store, Berzanskis' five-room living quarters, and a basement. A two-car garage was attached. Deputies searched the entire premises, the living quarters being their first stop (Appendix I).

There never was any suggestion by the searching officers that their purpose was to enforce liquor laws or make a tavern inspection. They were looking for stolen property (Appendix J).

The Commissioner heard testimony about the search warrant being quashed (Appendix K).

On May 29, 1967, Berzanskis received notice that the Local Liquor Control Commissioner had revoked his license (Appendix L). The order was based solely on possession of the property seized during execution of the faulty search warrant.

Berzanskis then pursued his remedy before the City of Chicago License Appeal Commission. There, the only issue he raised was the Commissioner's consideration of evidence previously suppressed in the criminal proceeding (Appendix M).

The License Appeal Commission, on August 9, 1967, reversed the Commissioner, finding his order of revocation was "not supported by substantial evidence in the light of the whole record." (See Appendix N)

The Local Liquor Commissioner then filed a complaint for administrative review in the Circuit Court. There, too, Berzanskis' position was that evidence ruled to have been illegally seized could not be used to revoke his liquor license. (See Appendix O for Berzanskis' Memorandum filed in the Circuit Court.)

Rejecting Berzanskis' Fourth Amendment argument, the Circuit Court reinstated the Commissioner's order revoking the liquor license (Appendix B).

Berzanskis then appealed to the Supreme Court of Illinois (Appendix P).

As the Court observed in its opinion (Appendix A), "Defendant has appealed directly to this court because the case involves questions arising under the Federal Constitution." And, "The only issue before this Court is whether the suppressed evidence was admissible before the liquor control commissioner."

In its opinion, the Illinois Supreme Court held that warrantless searches of premises housing a liquor business do not offend the Constitution. Agreeing that the "search was conducted with an apparently invalid warrant by the sheriff's police for the purpose of criminal prosecution," the Court nonetheless held the evidence seized could be used in the revocation proceeding.

One justice dissented.

REASONS FOR GRANTING THE WRIT

A.

The Illinois Supreme Court has decided important questions of federal constitutional law which have not been, but should be, settled by this Court.

By allowing unlawfully seized evidence to be used in a liquor license revocation hearing, the Illinois Supreme Court has carved out a significant and dangerous exception to the Fourth Amendment exclusionary rule.

In this case, sheriff's police obtained and executed a warrant that was fatally defective. The fact that licensed premises were included in the search was incidental to the warrant's purpose—seizure of stolen property.

This was not and never pretended to be a premise inspection or part of a regulatory program. The searching officers never suggested they were seeking to enforce Illinois liquor inspection laws. Their first stop was Berzanskis' living quarters, not his tavern.

Thus, this case does not involve the power of a state to authorize warrantless searches as part of a licensing program. This was not an administrative search.

The Fourth Amendment exclusionary rule, made binding on the states in *Mapp* v. *Ohio,* 367 U.S. 643, is aimed at deterring official lawlessness. The decision below would encourage bypassing of proper search warrant procedures by any law enforcement officer intent on harassing a liquor licensee.

The danger inherent in such a holding was recognized by the New York Court of Appeals in *In the Matter of Finn's Liquor Shop, Inc.* v. *State Liquor Authority*, 24 N.Y.2d 647, 653, 249 N.E.2d 440 (1969). There, the court decided illegally obtained evidence could not be used by the state to secure a liquor license revocation, Chief Judge Fuld saying:

> "To the extent that the State, or its agents can bypass the deterrent effect of the exclusionary rule by using the fruits of an illegal search in a 'civil' or 'administrative' proceeding, the incentive for enforcement and investigative personnel to exceed constitutional limitations on their activity remains and the effectiveness of the rule as a deterrent is diminished. Recognizing this, the courts have never hesitated to apply the exclusionary rule to a variety of proceedings, including those which, at least in form, are not of a criminal character."

The question of whether a liquor licensee surrenders his claim to Fourth Amendment protection is one that ought to be decided by this Court.

B.

The Illinois Supreme Court has decided a federal question in a way that conflicts with constitutional principles set down by this Court.

There is nothing new about the concept that the Fourth Amendment does not allow a governmental agency to profit from an unlawful search. The classic statement was made by Mr. Justice Holmes in *Silverthorne Lumber Company* v. *United States*, 251 U.S. 385, 392:

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court, but that it shall not be used at all."

Justice Holmes made no exception for liquor licensees in *Silverthorne,* nor does the Fourth Amendment.

Any proceeding which might penalize a person for the commission of an offense must be consistent with the Fourth Amendment. *One 1958 Plymouth Sedan* v. *Commonwealth of Pennsylvania,* 380 U.S. 693.

Here, police officers, with no thought of enforcing liquor laws, obtained a search warrant that clearly affronted the Fourth Amendment. A judge so ruled. Now, the fruits of that search have been used to revoke a liquor license. We submit that requiring the police to obey the law is much more important than the question of whether Frank Berzanskis sells whiskey.

Simply labelling the liquor license a "privilege" does not end the discussion. As this Court has said, "The right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal Constitution." *United States* v. *Chicago, M.,St.P.&P.R. Co.,* 282 U.S. 311, 328-329.

Berzanskis ought to have been protected by the Fourth Amendment in the administrative proceeding just as he was in the criminal prosecution. To say he is entitled to any less because holding a liquor license is a "privilege" would be to "manipulate out of existence" his Fourth Amendment protection by use of a label.

CONCLUSION

The opinion of the Illinois Supreme Court, holding a liquor licensee waives his Fourth Amendment protection in a revocation hearing, raises a substantial federal constitutional question not yet decided by this Court, although prior opinions have established principles of constitutional protection that appear to conflict with the Illinois court's holding. This petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

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Financial 6-0285
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APPENDIX

APPENDIX A

Docket No. 42698—Agenda 48—September, 1970.

RICHARD J. DALEY, Mayor and Liquor Control Comr., Appellee, *vs.* FRANK BERZANSKIS, Appellant.

Mr. JUSTICE KLUCZYNSKI delivered the opinion of the court:

After a hearing before the local liquor control commissioner the liquor license of defendant, Frank Berzanskis, was revoked. The basis for the finding was testimony concerning property which had been seized on defendant's premises by Cook County sheriff's police. The evidence was admitted over defendant's objection that the search and seizure violated his rights under the fourth and fourteenth amendments of the Federal constitution. On defendant's appeal the license appeal commission of the city of Chicago reversed the order of the commissioner who then brought proceedings in the circuit court of Cook County under the Administrative Review Act. (Ill. Rev. Stat. 1963, ch. 110, pars. 264-279.) The court reversed the order of the appeal commission and affirmed the order of the commissioner. Defendant has appealed directly to this court because the case involves questions arising under the Federal constitution.

On August 4, 1966, defendant was operating a tavern in the city of Chicago under a license issued by the local liquor control commissioner. In addition to the tavern, the building also housed a grocery store, defendant's five-room living quarters and a basement. There was a front entrance leading to the tavern, a side entrance leading to the grocery and a back entrance leading to one of the

bedrooms. The basement had in it a bar room and a laundry room with access by way of a stairway at the end of the upstairs bar. A door at the top of the stairway was kept open at all times. The basement was used by defendant for storage of empty containers in connection with the operation of the upstairs tavern.

On the date indicated two officers of the Cook County sheriff's police armed with a search warrant proceeded to the premises in question and searched defendant's living quarters and the basement where numerous items of stolen property were found and seized. Defendant was then arrested and charged with the offense of receiving stolen property. At a hearing on September 21, 1966, the search warrant was quashed and the evidence seized ordered suppressed in the criminal case. The defendant was then discharged and no appeal was taken by the State from the order quashing the warrant. Subsequent to the ruling, a complaint was filed to revoke defendant's liquor license. The only issue before this court is whether the suppressed evidence was admissible before the liquor control commissioner.

Appellant contends that the search was a violation of his fourth amendment right to privacy and therefore the evidence seized should be excluded from all proceedings. There are two questions involved: whether the search was authorized by statute and whether authorization for a warrantless search would be a violation of the fourth amendment.

We consider first whether authorization for a warrantless search is constitutional. "Like other courts, this court has often held that because of its nature the right to engage in the liquor trade is not an inherent one, but is subject to regulation by the State in the exercise of its police power.

(*Oak Park Nat. Bank* v. *Village of Broadview* (1963), 27 Ill.2d 151, 154; *Schreiber* v. *Liquor Control Com.* (1957), 12 Ill.2d 118, 121; *Hornstein* v. *Liquor Control Com.* (1952), 412 Ill. 365, 369." (*Miller* v. *Liquor Control Com.* 44 Ill.2d 155, 157-158.) The court, in *People ex rel. Fitzgerald* v. *Harrison,* 256 Ill. 102, noted: "The business of selling liquor is attended with danger to the community and is a recognized subject for regulation by the police power of the State. There is no inherent right to carry it on and it may be entirely prohibited. The manner and extent of its regulation, if permitted to be carried on at all, are to be determined by the State, so as to limit, as far as possible, the evils arising from it." (256 Ill. at 106.) Because the business of selling liquor is closely related to certain evils in society, it is subject to any regulation which has any substantial relation to the public health, comfort, safety or welfare. "It is axiomatic that the legislative judgment as to what the public welfare requires is not open to judicial dispute so long as that judgment is not exercised in such an arbitrary, oppressive and unreasonable manner as to constitute a deprivation of due process of law. The legislature's discretion is broad, and its determination may not be overturned because a court may think them unwise or inappropriate." (44 Ill.2d at 158.) Considering the nature of the business we do not believe that a close scrutiny of the operation of the business through warrantless searches is unreasonable or arbitrary.

In *Solomon* v. *Liquor Control Commission* (1965), 4 Ohio St. 2d 31, 212 N.E.2d 595, *cert. denied* (1966), 384 U.S. 928, 16 L.Ed. 2d 531, the Ohio Supreme Court upheld the revocation of a liquor license based on the finding that certain bottles seized in a warrantless search were diluted. Defendant there, as here, argued that the evidence was illegally obtained and should be inadmissible under the ex-

clusionary rule of *Mapp* v. *Ohio,* 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684. Section 4301.10 of the Revised Code of Ohio, permits a warrantless inspection of the place of business of any permit holder. The Ohio court found that the search and confiscation of the bottles were valid under section 4301.10, stating: "Our conclusion is that the appropriation of appellee's bottles of whiskey and the analysis of their contents were authorized under the Liquor Control Act, and that by applying for and accepting a permit to sell intoxicating beverages appellee made herself amenable to the provisions of that law and thereby consented to the inspection of the premises, and the appropriation for analysis of any intoxicating liquor suspected to be in violation of the liquor control laws * * *. It follows that such bottles of whiskey were properly admitted in evidence at the hearing before the Liquor Control Commission.

"Because of the position taken, it becomes unnecessary to consider and discuss the question of whether the exclusionary rule announced by the Supreme Court of the United States in the criminal case of *Mapp* v. *Ohio, supra,* and kindred cases is applicable to hearings before a public administrative agency like the Liquor Control Commission in instances where only the suspension or revocation of a liquor permit is involved." 4 Ohio St. at 34, 36.

We agree with the Ohio court that one who applies for and is issued a permit to sell alcoholic beverages thereby assents to the reasonable and lawful conditions imposed by statute and rule and find that due to the potentiality of criminal activity in the liquor business there is no constitutional objection to requiring consent to a warrantless search as a prerequisite to the issuance of a liquor license. The State of Illinois could completely prohibit the sale of liquor, but having instead chosen to regulate it, any restriction or

requirement such as consent to a warrantless search, which is necessary to protect public health, safety and morals, is a reasonable exercise of the police power of the State. For similar result, see: *State Liquor Comm.* v. *Lucien Gilbert* (Me. 1970), 270 A.2d 876; *Manchester Press Club* v. *State Liquor Comm.*, 89 N.H. 442, 200 A. 407, *contra: Finn's Liquor Shop, Inc.* v. *State Liquor Authority*, 24 N.Y.2d 647, 249 N.E.2d 440.

We next consider the question whether the Liquor Control Act (Ill. Rev. Stat. 1969, ch. 43, par. 94 *et seq.*) is applicable to the facts of this case. The search was conducted with an apparently invalid warrant by the sheriff's police for the purpose of criminal prosecution. Section 3 of article IV of the Act (Ill. Rev. Stat. 1969, ch. 43, par. 112) provides that each local commissioner has the power to enter or to authorize the entry of a law enforcement officer upon any licensed premises at any time, while section 8 of article X sets forth the procedure for issuance of a search warrant for nonlicensed premises but further provides that "no search warrant shall be necessary for the inspection or search of any premises licensed under this Act." (Ill. Rev. Stat. 1969, chap. 43, par. 190.) Section 5 of Rule 3 of Article III of the Illinois Liquor Control Commission provides: "Proof before this Commission of facts which establish a violation of any state statute, city, village, town or county ordinance or resolution or rule of this Commission, shall be sufficient cause for revocation or suspension of any license issued by the Commission, irrespective of whether or not a conviction has been obtained in any Court." When these provisions and the rule are considered together, it is apparent that section 8 of article X was intended to do more than repeat the authority expressed in section 3 of article IV. From a reading of these provisions it neces-

sarily follows that for the limited purpose of a license revocation hearing evidence of a crime will not be suppressed for lack of a valid search warrant. Clearly, however, this has no application outside of the area of liquor control.

Stolen property, consisting of approximately one thousand individual items including cameras, radios, office equipment, mink coats, guns, jewelry and small appliances, was found in defendant's living quarters and in the basemet below the tavern. There is support in the record for the commissioner's conclusion that, due to the control of the basement and the accessibility to it from the tavern, the basement was considered part of the licensed premises. Testimony concerning evidence seized in the basement, to-wit: two television sets, a phonograph and a portable electric typewriter, was admitted before the commissioner and this is sufficient to sustain the revocation.

For the foregoing reasons the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

Mr. Justice Goldenhersh, dissenting:

I respectfully dissent from the majority opinion and would reverse the judgment. The basis for my objection to the court's holding is well stated in the concurring opinion of Mr. Justice Douglas in *Thorpe* v. *Housing Authority of the City of Durham*, 386 U.S. 670, 678-9, 18 L. Ed. 2d 394, 87 S. Ct. 1244:

"The recipient of a government benefit, be it a tax exemption (*Speiser* v. *Randall*, 357 U.S. 513), unemployment compensation (*Sherbert* v. *Verner*, 374 U.S. 398), public employment (*Slochower* v. *Board of Education*, 350 U.S. 551), a license to practice law (*Spevack* v. *Klein*, 385 U.S. 511), or a home in a public housing project cannot be made to forfeit the benefit because he exercises a constitutional right. In *United States* v. *Chicago, M., St. P. & P. R. Co.*, 282 U.S. 311, 328-329, the Court said that 'the right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal Constitution.' This was in the tradition of *Frost Trucking Co.* v. *Railroad Comm'n*, 271 U.S. 583, 594, where the Court emphasized that 'if the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence'."

APPENDIX B

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS

— DEPARTMENT —

(COUNTY) (MUNICIPAL) (DIVISION) (DISTRICT)

RICHARD J. DALEY, ET AL.,

VS.

FRANK BERZANSKI, ET AL.

— — — — — —

No. 67 L 14168

— — — — — —

O R D E R

This cause coming to be heard for trial and the court being advised of the premises.

It is hereby ordered that the order of the License Appeal Commission reversing the local liquor Central Commission is reversed and that the order of the Local Liquor Central Commissioner for the City of Chicago is affirmed.

Judge Edward F. Healy
August 20, 1969
Circuit Court
69L38 1744
August 20, 1969
Enter:
/s/ *Edward F. Healy*
Judge

Name R. F. Simon
Attorney for Daly
Address City Hall
City Chicago
Telephone 744-6910

APPENDIX C

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of January in the year of our Lord, one thousand nine hundred and seventy-one, within and for the State of Illinois.

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE
JUSTICE WALTER V. SCHAEFER
JUSTICE DANIEL P. WARD
JUSTICE JOSEPH H. GOLDENHERSH
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE CHARLES H. DAVIS
JUSTICE HOWARD C. RYAN
WILLIAM J. SCOTT, ATTORNEY GENERAL
ROBERT G. MILEY, MARSHAL
ATTEST: JUSTIN TAFT, CLERK

Be It Remembered, that, to-wit: on the 25th day of January 1971, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

RICHARD J. DALEY, ET AL.,

Appellees,

No. 42698 vs.

FRANK BERZANSKIS,

Appellant.

Appeal from Circuit Court, Cook County, 67 L 14168

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellees recover of and from the said appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 22nd day of February, 1971.

/s/ Justin Taft

Clerk,

Supreme Court of the State of Illinois.

(S E A L)

APPENDIX D

JOSEPH J. McDONOUGH,

Clerk of Court

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The Circuit Court of Cook County
The People of the State of Illinois to all peace officers of the state or .....

SEARCH WARRANT

ON THIS DAY W. P. McCARTHY, COMPLAINANT, HAS SUBSCRIBED and sworn to a complaint for search warrant before me. Upon examination of the complaint I find that it states facts sufficient to show probable cause and I therefore command that (the person of ..... entire first floor consisting of a tavern and living quarters to the rear thereof; also the basement under the entire first floor and an attached two car brick garage at 2334 South Hoyne Avenue, Chicago, Illinois, commonly known as Frankie's Tap be searched and the following instrument, articles and things which have been used in the commission of, or which constitute evidence of, the offense of Receiving Stolen Property be seized therefrom: One Smith Corona portable electric typewriter, Serial #6LE 2106417; one Zenith, 19 inch black and white television serial #3714179, ivory in color.

I further command that a return of anything so seized shall be made without unnecessary delay before me or before Judge Wm. McGah, Jr. or before any court of competent jurisdiction.

/s/ McGah

Judge

Time and date of issuance August 4, 1966, 3:30 P.M.

THE CIRCUIT COURT OF COOK COUNTY

STATE OF ILLINOIS
COUNTY OF COOK } *ss.*

COMPLAINT FOR SEARCH WARRANT

W. P. McCarthy complainant now appears before the undersigned judge of The Circuit Court of Cook County and requests the issuance of a search warrant to search the entire first floor, consisting of a tavern and living quarters to the rear thereof; also the basement under the entire floor and an attached two car brick garage commonly known as Frankie's Tap at 2334 South Hoyne Avenue, Chicago, Illinois, and seize the following instruments, articles and things which have been used in the commission of, or which constitute evidence of, the offense of Receiving stolen property.

Complainant says that he has probable cause to believe, based upon the following facts, that the above listed things to be seized are now located upon the (person and) premises set forth above:

> One Smith Corona portable, electric typewriter, Serial #6LE2106417; one Zenith, 19 inch black and white television serial #3714179, ivory in color;

That information was given to me from a reliable informant who was used in the past on similar matters and which information proved to be reliable and affiant believes information given at this time to be reliable.

W. P. McCarthy
Complainant

Subscribed and sworn to before me on 8-4-66, 19 ——.

McGah
Judge

APPENDIX E

CITY OF CHICAGO
LOCAL LIQUOR CONTROL COMMISSIONER

Room 507, City Hall
Chicago 2, Illinois

In Re Proceedings To Revoke City of Chicago Retail Liquor License Issued to Frank Berzanski *Licensee.*	)	No. 66-325
Licensed Premises Located at 2334 S. Hoyne Avenue License No. 167 To Frank Berzanski 2334 S. Hoyne Ave. Chicago, Illinois	)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing will be held in Room 910 - City Hall Chicago, Illinois on the 27th day of January A.D. 1967 at 10:00 A.M. in connection with proceedings to revoke City of Chicago Retail Liquor License No. 167 heretofore issued to you for premises located at 2334 S. Hoyne Avenue upon the following charges, to-wit:

1. That on August 4, 1966, Frank Berzanski, the licensee of the licensed premises, was in possession of stolen goods at his apartment and basement on said premises, to-wit: a General Electric Stereo radio, model number T1040A, stolen from one Mrs. Willis Young; a .33830 Caliber Winchester Rifle, serial number 71348, a .357 Caliber Colt Revolver, serial number 15998, a .38 caliber S and W. snub nose revolver, serial number 267767, and one rifle case, all of which were stolen from one John Kloski; a .38 caliber S. and W. revolver, serial number 39122, stolen

from one Forest Miller; a .22 caliber High Standard Revolver, serial number 1116587, stolen from one Charles Poscocil, in violation of the Ordinances of the City of Chicago and the Statutes of the State of Illinois.

2. That on August 4, 1966, Frank Berzanski, the licensee of the licensed premises, was in possession of other items of stolen goods, to-wit; numerous items of personal property including cameras, radios, office equipment, mink coats, guns, jewelry, small appliances, and a coin collection, in violation of the ordinances of the City of Chicago and the Statutes of the State of Illinois.

PLEASE TAKE FURTHER NOTICE that at said hearing you may be represented by counsel and you may produce witnesses and introduce evidence on your own behalf. In case of your failure to appear, a determination will be made by default.

Dated at Chicago, Illinois,
this 10 day of January, A.D. 1967
This is to certify that I have served the
within notice of hearing by leaving a copy thereof
with *Frank Berzanski*
at 2334 S. Hoyne
this 16th day of Jan 1967 at 11:10 A.M. o'clock.

Sgt. J. O'Donnell
#793

By order of
Richard J. Daley
Richard J. Daley
Mayor of the City of Chicago
Local Liquor Control Commissioner

APPENDIX F

Mrs. Wolfson: One moment. At this time I have a motion to present to you.

The subject of the motion—here is a copy for you, counsel—is that the licensee, Mr. Berzanski was licensee of the premises in August of 1966.

At that time, in August, a search warrant was issued for a search of the premises.

The warrant was executed and certain personal property was seized in the premises.

The Commissioner: From what premises, the licensed premises?

Mrs. Wolfson: No, sir. The property was seized from the living quarters of Mr. Berzanski.

The Commissioner: Was the search warrant for the living quarters?

Mrs. Wolfson: It was.

The licensed premises is a bar that is behind a small store, and behind all of this are the living quarters of Mr. Berzanski.

There is a basement underneath all of these premises.

The personal property was seized from the living quarters of Mr. Berzanski and from the basement.

Subsequently Mr. Berzanski was placed under arrest.

A motion to quash and suppress the evidence was filed in the Oaklawn Court and the motion was sustained. No appeal was taken from that motion.

No further proceedings on any further criminal charge.

The property seized is the subject of the charges today, and we submit, and this is the subject of our motion, that that evidence has been suppressed, that it cannot be the subject of this charge because it has been suppressed.

That to make it the subject of this charge is a violation of Mr. Berzanski's rights under the 4th, 5th and 14th Amendments to the Constitution of the United States, and to Article II, Section 6, of the Illinois Constitution.

APPENDIX G

CITY OF CHICAGO
LOCAL LIQUOR CONTROL COMMISSIONER

Room 907, City Hall
Chicago 2, Illinois

In Re Proceedings To	)	
Revoke City of Chicago	)	
Retail Liquor License	)	
Issued To Frank Berzanski,	)	
Licensee	)	No. 66-325
Licensed Premises Located	)	
at 2334 South Hoyne Avenue	)	
License No. 167		

MOTION

Comes now the licensee, Frank Berzanski, by Warren D. Wolfson, his attorney, who says as follows:

1. He is the licensee of the premises at 2334 South Hoyne Avenue, Chicago, Illinois.

2. On or about August 4, 1966, certain items of property were found in the apartment in which he lives and in the basement that services the building. The items were found by officers of the Cook County Sheriff's police department. They were in the process of executing a search warrant. A copy of the warrant and the affidavit in support of it are attached to this motion as Exhibit A and A1.

3. After the items were seized by the said officers the licensee Berzanski was placed under arrest. His case, number 66 MC-551599, was assigned to the Oak Lawn Branch of the Circuit Court of Cook County. The com-

plaint against him alleged that items seized during the search were stolen from various persons. The Notice of Hearing in this cause makes the same allegations. None of the items named was found on the licensed premises.

4. On September 21, 1966, the licensee, by his attorney, filed a Motion to Quash Warrant and Suppress Evidence in the Oak Lawn Court. A signed and notarized copy of that Motion is attached to this motion as Exhibit B. After hearing argument of counsel and examining the pleadings, the Court sustained the motion of your licensee, quashing the warrant and suppressing all evidence found upon its authority. The State's Attorney of Cook County then dismissed the case.

5. No appeal was taken from the Court's ruling.

6. The evidence sought to be introduced by the Corporation Counsel in this hearing is the same as that suppressed by a judge of the Circuit Court.

7. Introduction of that evidence in this hearing would violate the licensee's rights under Amendments Four, Five and Fourteen of the United States Constitution and Article II, Section 6 of the Illinois Constitution, S.H.A. Further, the doctrine of *res judicata* bars introduction of the evidence already suppressed by ruling of a Court.

8. The search warrant which authorized the search of the licensee's living quarters and basement was fatally defective, improperly drawn, and failed to state grounds upon which the issuing magistrate could find probable cause for its issuance. Further, the warrant was improperly executed, and the officers seized items not named in the warrant. For those and additional reasons the search warrant violated the licensee's rights under Amendments Four, Five and Fourteen of the United States Constitution and Article II, Section 6 of the Illinois Constitution, S.H.A.

WHEREFORE, for the above-stated reasons, your licensee prays that the Commissioner suppress or bar the use in evidence against the licensee of any items of property seized on the authority of the search warrant. In the alternative, the licensee prays that the Commissioner make an independent determination of the validity of the search warrant and the search it authorized; for that purpose we present Exhibit B as a petition to quash the search warrant and suppress evidence in this cause.

/s/ *Frank Berzanskis*
Frank Berzanskis

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

FRANK BERZANSKIS, being first duly sworn on oath deposes and states that he has read the foregoing Motion by him subscribed, knows the contents thereof, and that the same are true and correct in substance and in fact.

Frank Berzanskis
Frank Berzanskis

Subscribed And Sworn
to before me this 9
day of February, 1967.
Warren D. Wolfson
Notary Public

Warren D. Wolfson
Attorney for Frank Berzanskis
30 North LaSalle Street
Chicago, Illinois 60602
PH: 346-6734

APPENDIX H

Mr. Wolfson: Mr. Commissioner, we will object to anything that involves the execution of this search warrant. A judge of the Circuit Court of Cook County has ruled that the search warrant was illegally obtained that it was in violation of Berzanski's rights under the 4th Amendment of the United States Constitution, Article 2, Section 6 of the Illinois Constitution.

Mr. Greenburg: Mr. Commissioner, in opposition to counsel's motion, I will state as follows:

Mr. Berzanski, the licensee of these premises, was granted a liquor license in the City of Chicago, which is a privilege and not a right.

In connection with that privilege, certain civil rights he agrees to waive for purposes of the operation and control of his operation of the licensed premises.

We feel that since this is a civil proceeding, and Mr. Berzanski was the licensee, at the time, that this search was executed, that there is no violation of his civil rights in connection with any proceedings brought by the Local Liquor Control Commissioner for the purposes of determining whether Mr. Berzanski is a fit person to have said license in the city.

Mr. Wolfson: The charge before the Commissioner is that he was in possession of certain property.

The defendant does not forego his constitutional rights when he walks into a hearing of this kind, sanctioned by law, created by law and subservient to the law.

The City is seeking to enforce a sanction that is penal in character and the point of the 4th Amendment prohibition against illegally seized evidence is that it may not be used at all in any kind of a judicial proceedings.

APPENDIX I

Q. All right, entering the apartment, what was the first thing you did?

A. We proceeded to search the apartment.

Q. Which room did you search first?

A. His bedroom.

Q. And what, if anything, did you find in his bedroom?

A. We found numerous items in there, such as ladies' nylons, coin collections, rifles, men's shirts, and other items that I don't recall right now.

Q. Did you make notes relative to the evidence which you seized in the process of this search?

A. Yes, in that—

Mr. Wolfson: May we have a standing objection to any of this testimony?

The Commissioner: Yes, the record will so show.

APPENDIX J

Mr. Wolfson: Deputy, you went to the house of Frank Berzanski for what purpose?

A. To attempt to recover this merchanidse.

Q. And for the purpose of searching the house; is that correct?

A. The tavern and the apartment.

Q. The entire premises?

A. Correct.

APPENDIX K

Q. You placed certain charges against Mr. Berzanski?

A. Yes.

Q. What charges did you place against him?

A. Receiving.

Q. Did you appear in court on the disposition of these charges?

A. Yes.

Q. What date and before what judge did you appear?

A. The first date was the 21st of September and I don't recall the judge.

Q. Was it disposed of at that time?

A. No, sir, I don't recall the date it was disposed of.

Q. All right, and what was the final disposition in this case?

A. As counsel stated, improper search warrant.

Q. He was discharged?

A. Yes, sir.

The Commissioner: The search warrant was quashed?

A. Yes, sir.

APPENDIX L

LICENSE REVOKED

Local Liquor Control Commissioner
City of Chicago

In Re Proceeding to Revoke	)	
City of Chicago Retail Liquor License	)	
Issued to Frank Bersanski	)	
Licensee.	)	No. 66-325
Licensed Premises	)	
Located at 2334 S. Hoyne Avenue	)	

ORDER OF REVOCATION

These proceedings having been duly instituted by Richard J. Daley, Mayor of the City of Chicago, Local Liquor Control Commissioner, pursuant to the provisions of the Liquor Control Act of the State of Illinois (Chapter 43, Illinois Revised Statutes, 1961,) to revoke City of Chi-

cago retail liquor license heretofore issued to FRANK BERSANSKI for premises located at 2334 S. Hoyne Avenue and written notice having been duly served upon the said licensee on the 16th day of January, A.D. 1967, and a public hearing having been duly held by the Local Liquor Control Commissioner in connection with said proceedings on the 9th day of February, A.D. 1967; and on the 24th day of May, A.D. 1967;

The Local Liquor Control Commissioner having duly considered the proceedings and having duly deliberated thereon, and being fully advised in the premises, FINDS:

IT IS THEREFORE ORDERED that the City of Chicago retail liquor license issued to FRANK BERSANSKI for premises located at 2334 S. Hoyne Ave., be, and the same is, hereby REVOKED.

ENTERED by the Local Liquor Control Commissioner of the City of Chicago this 29th day of May, A.D. 1967.

Richard J. Daley
Richard J. Daley

Mayor of the City of Chicago
Local Liquor Control Commissioner

APPENDIX M

Chairman Cronin: We will now proceed to the Frank Bersanski matter. Is there any one present in this matter?

Mr. Klinsky: I represent the licensee, Mr. Chairman.

Chairman Cronin: You may proceed.

Mr. Klinsky: In this case, Your Honor, on August 4, 1966, the Sheriff's Police pursuant to a search warrant, seized personal property in Mr. Bersanski's apartment. Mr. Bersanski was placed under arrest. This case was assigned to the Oak Lawn branch of the Circuit Court, 66 MC 551599; on September 21, 1966, the licensee, by

his attorney, filed a motion to quash the warrant and suppress the evidence in the Oak Lawn court.

The court sustained the motion to quash the warrant and suppressed all evidence.

The State's Attorney then dismissed the case. No appeal was taken from the court's ruling. None of the goods seized pursuant to the invalid search warrant was found on the licensee's premises.

The goods that were seized and introduced before the Local Liquor Control Commissioner were found in the licensee's premises and four items were allegedly found in the basement; they were two TV sets which there was no evidence by anyone stating they owned or claimed these items; one radio which Mr. Bersanski claimed and still has in his possession; and one portable typewriter. In the testimony, there is a dispute as to whether the typewriter was found in the apartment or basement of the premises.

The physical location of the licensee's premises is very important. The licensed bar is separated from the living quarters of the licensee by a grocery store. There is a bar in the basement and also a laundry room; to get to the bar in the basement, there is a door, and approximately ten steps leading to the basement. The evidence is uncontroverted. No liquor was sold from the basement. There was no cash register, no glasses, and there was no evidence of recent use of the basement premises for the sale of alcoholic beverages.

The sole question in this case is whether the illegally seized evidence not found on the licensee's premises was admissible in evidence before the Local Liquor Control Commissioner, and whether the admission of the evidence violated the rights of the constitution, under the 14th Amendment of the U. S. Constitution, and Article 6 of the Illinois Constitution.

APPENDIX N

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

IN THE MATTER OF FRANK BERSANSKI, LICENSEE of the premises located at 2334 S. Hoyne Avenue	)	67 LA 32
ON APPEAL OF FRANK BERSANSKI, LICENSEE	)	

ORDER

The Commission having considered the appeal of FRANK BERSANSKI, LICENSEE, from the order of revocation of the Mayor, as Local Liquor Control Commissioner of the City of Chicago, entered and taken June 6, 1967, and the Commission having reviewed the said appeal and the transcript of proceedings taken before the Mayor, as Local Liquor Control Commissioner, on the 9th day of February, 1967 and on the 24th day of May, A.D. 1967, and the Commission having heard Oral Arguments of counsel and now being fully advised in the premises, DOTH FIND:

A) That the Mayor, as Local Liquor Control Commissioner, has proceeded in the manner provided by law.

B) That the Order of Revocation is not supported by the Findings.

C) That the Findings, namely:

"1. That on August 4, 1966, Frank Bersanski, the licensee of the licensed premises, was in possession of stolen goods at his apartment and basement on said premises, to-wit: a General Electric Stereo radio, model number T104CA, stolen from one Mrs. Willie

Young; a .33830 Caliber Winchester Rifle, serial number 71348, a .357 Caliber Colt Revolver, serial number 15998, a .38 caliber S and W. snub nose revolver, serial number 267767, and one rifle case, all of which were stolen from one John Kloski, a .38 caliber S. and W. revolver, serial number 39122, stolen from one Forest Miller; a .22 caliber High Standard Revolver, serial number 1116587, stolen from one Charles Poscocil, in violation of the Ordinances of the City of Chicago and the Statutes of the State of Illinois.

2. That on August 4, 1966, Frank Bersanski, the licensee of the licensed premises, was in possession of other items of stolen goods, to-wit: numerous items of personal property including cameras, radios, office equipment, mink coats, guns, jewelry, small appliances and a coin collection, in violation of the Ordinances of the City of Chicago and the Statutes of the State of Illinois.

3. That on August 4, 1966, Frank Bersanski, the licensee of the licensed premises, was in possession of stolen goods at his apartment and basement on said premises, to-wit: one Winchester Model 50, 12 gauge automatic shotgun, serial #93354; one Ithca pump shotgun, serial #60515; one Browning 12 gauge Superposed shotgun, serial #39751, all of which was valued in excess of $700.00 and stolen from Benjamin B. Beale; one Silvertone Clock Radio, Model 6049 valued at $40.00; one Silvertone S Transistor Radio, valued at $75.00, all of which were stolen from Mrs. Kenneth Robinson; one Custom Newmann 12 gauge shotgun serial #59974 valued at $200.00, one Mauser Bolt Action 8mm rifle, serial #2005Y, valued at $15.00, stolen from H. F. Brunke, one Zenith Trans-Oceanic radio, Model 1000, stolen from Jean DeMatter; one Bell and Howell 16mm Camera with case, valued at $75.00, stolen from George Grefortick, in violation of the Ordinances of the City of Chicago and the Statutes of the State of Illinois,

are not supported by substantial evidence in the light of the whole record.

By reason whereof it was not proper for the Mayor, as Local Liquor Control Commissioner of the City of Chicago, to revoke the said license issued to FRANK BERSANSKI.

IT IS THEREFORE ORDERED AND ADJUDGED That the order or action of the Mayor, as Local Liquor Control Commissioner of the City of Chicago, in revoking the said license of Frank Bersanski be, and the same is hereby REVERSED.

ENTERED By the Commission this 9th day of August, A. D. 1967.

APPENDIX O

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DIVISION

RICHARD J. DALEY, et al.,	)	
	)	
vs.	)	No. 67 L 14168
	)	
FRANK BERZANSKIS	)	

MEMORANDUM IN SUPPORT OF LICENSEE

The licensee contends the Local Liquor Control Commissioner was foreclosed from considering the various items found in the apartment and basement of the licensed premises. This contention is based on the fact that all the property introduced against him was seized in violation of the licensee's constitutional right to be free of unreasonable searches and seizures.

On or about August 4, 1966, the property introduced in the administrative hearing was found in the apartment inhabited by Berzanskis and in the basement that services the building. The items were found during the execution

of a search warrant by officers of the Cook County Sheriff's Police Department. A copy of the warrant and affidavit are attached to this memorandum.

After the items were seized by the officers, the licensee Berzanskis was placed under arrest. His case, number 66 MC 551599, was assigned to the Oak Lawn Branch of the Circuit Court of Cook County. The complaint against him alleged that items seized during the search were stolen from various persons. The complaint in the hearing before the Local Liquor Commissioner made the same allegations. None of the items named was found on the licensed premises.

On September 21, 1966, the licensee, by his attorney, filed a Motion to Quash Warrant and Suppress Evidence in the Oak Lawn Court. After hearing argument of counsel and examining the pleadings, the Court sustained the Motion, quashing the warrant and suppressing all evidence found upon its authority. The State's Attorney of Cook County then dismissed the case. No appeal was taken from the Court's ruling.

When the hearing on this cause was held before the Local Liquor Commissioner, the licensee, through his attorney, repeatedly objected on Fourth Amendment grounds to any use of the suppressed property. The Commissioner was invited to make an independent examination of the search warrant in question. All objections were overruled. The Local Liquor Commissioner entered an order revoking Berzanskis' license.

At the hearing before the License Appeal Commission the licensee again argued against the use of property seized in violation of his Fourth Amendment rights. The ruling of the Local Liquor Commissioner was reversed.

Whether Your Honor relies on the decision of the Oak Lawn Court or whether he makes an independent determination of the validity of the search warrant, there can be no question that the property was unlawfully seized. The affidavit for the search warrant is palpably insufficient on its face. *People* v. *Parker,* 245 N.E.2d 487; *Spinelli* v. *United States,* 393 U.S. 410; *Aguilar* v. *State of Texas,* 378 U.S. 108.

And now the Local Liquor Commissioner seeks to use the fruits of the unlawful search to revoke the licensee's privilege to engage in the liquor business.

The constitutions of the United States and of the State of Illinois forbid such a proceeding. See *Amendments Four* and *Fourteen, U.S. Constitution*; *Article II, Section 6, Illinois Constitution.*

The question directly before Your Honor is whether unlawfully seized evidence can be used at an administrative hearing to revoke the liquor license of the man who was the victim of the unlawful search . . .

APPENDIX P

NOTICE OF APPEAL

Appeal To The Supreme Court Of Illinois
From The Circuit Court of Cook County, Illinois

RICHARD J. DALEY ET AL, PLAINTIFFS-APPELLEES	)	
	)	67L 14168
v.	)	NOTICE OF APPEAL
FRANK BERZANSKIS DEFENDANT-APPELLANT	)	

Please take notice, that the defendant in the above-entitled cause hereby appeals to the Supreme Court of Illinois from the judgment rendered and entered in the Circuit Court of Cook County, Illinois, on the 20th day of August, 1969 overruling the decision of the License Appeal Commissioner.

Defendant prays that this court reverse the judgment of the Circuit Court of Cook County and reinstate the decision of the License Appeal Commissioner.

Patrick S. Filter, Jr.

WARREN D. WOLFSON
PATRICK S. FILTER, JR.
30 N. LaSalle Street
Chicago, Illinois
FI 6-0285

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1540

FRANK BERZANSKIS,
Petitioner,

vs.

RICHARD J. DALEY, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENTS IN OPPOSITION.

RICHARD L. CURRY,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Respondents.

EDMUND HATFIELD,
HOWARD C. GOLDMAN,
Assistant Corporation Counsel,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

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FRANK BERZANSKIS,

Petitioner,

vs.

RICHARD J. DALEY, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENTS IN OPPOSITION.

QUESTION PRESENTED FOR REVIEW.

Whether the liquor commissioner, acting under the police power and the statutes of the State of Illinois, properly revoked the retail liquor license of the petitioner, who was in possession of stolen property stored on the licensed premises.

REASONS FOR DENYING THE WRIT.

THE DECISION OF THE SUPREME COURT OF ILLINOIS IS COMPLETELY CONSISTENT WITH BOTH CONSTITUTIONAL PRINCIPLES AND CASE LAW.

There is no more reason to grant certiorari in this case than there was in *Solomon* v. *Liquor Control Commission,* 4 Ohio St. 2d 31, 212 N. E. 2d 595 (1965), in which this Court denied certiorari 384 U. S. 928 (1966). In *Solomon* the Ohio Supreme Court upheld the revocation of a liquor license on a finding that bottles of diluted liquor were discovered during a warrantless search. There, as here, the defendant argued that the evidence was illegally obtained and should be inadmissible under the exclusionary rule of *Mapp* v. *Ohio,* 367 U. S. 643. In the decision which this Court declined to review, the Ohio Supreme Court held that, by applying for and accepting a license to sell intoxicating beverages, the defendant had consented to the provisions of the liquor control statute and warrantless inspection of the premises.

In the case at bar, the Illinois Supreme Court expressly relied on *Solomon* and it was well advised so to do.

The petitioner's suggestion (Petn., p. 7) that the decision of the Supreme Court of Illinois creates a "dangerous exception to the Fourth Amendment exclusionary rule" is unfounded. In fact, the decision merely ratifies the long-existing rule which holds that under facts such as are shown in the present record, license revocation both is proper, and legally justified. There was reasonable basis for revoking the license, and consequently, the revocation was not tinged with arbitrariness. It is noteworthy that in none of the several hearings accorded him, nor in any of his

pleadings, has the petitioner denied that he was in possession of stolen property stored on the licensed premises.

In *Parks* v. *Allen,* 426 F. 2d 610 (5th Cir. 1970), the Court recently stated (at 613):

> "It is firmly established that the state through the 21st Amendment has a broad right to regulate traffic in intoxicating liquors in the valid exercise of its police power. Crowley v. Christensen, 137 U. S. 86, 11 S. Ct. 13, 34, L. Ed. 620 (1890); Joseph E. Seagram & Sons, Inc. v. Hostetler, 384 U. S. 35, 86 S. Ct. 1254 (1966); Hornsby v. Allen, 326 F. 2d 605 (1964). *Moreover, the Fourteenth Amendment admits of the exercise of a wide scope of discretion in this regard. It only prohibits what is done when it is without any reasonable basis and therefore is purely arbitrary,* E. g. Block v. Hirsh, 356 U. S. 135, 41 S. Ct. 458, 65 L. Ed. 865 (1920); Mestre v. City of Atlanta, 255 F. 2d 401 (5th Cir. 1958). Moreover, *the exercise of the power in connection with the liquor industry particularly allows the widest discretion and is subject to minimal demands of the Fourteenth Amendment's due process and equal protection requirements.* See United States v. Frankfort Distillers, 324 U. S. 293 at 299(5), 65 S. Ct. 661, 89 L. Ed. 951 (1945); Atlanta Bowling Center, Inc. v. Allen, 389 F. 2d 713 (5th Cir. 1968); Lewis v. City Grand Rapids, 356 F. 2d 276 (6th Cir. 1966)." (Emphasis added.) See also, Ziffrin v. Reeves, 308 U. S. 132, 84 L. Ed. 128, 138 (1939); Krauss v. Sacremento Inn, 314 F. Supp. 171 (D. C., E. D. Calif., 1970); Martin v. King, 417 F. 2d 458, 462 (Tenth Cir. 1969); Mosher v. Beirne, 357 F. 2d 638, 641 (8th Cir. 1966).

"A city government has wide discretion and broad powers in the control of the liquor traffic. These are subject only to minimal demands of due process and equal protection". (*Barnes* v. *Merritt,* 428 F. 2d 284 (5th Cir. 1970.)

In *Samuels* v. *McCurdy,* 267 U. S. 188, 196 45 S. Ct. 269, 69 L. Ed. 568 (1924), this Court repeated the language from *Mugler* v. *Kansas,* 123 U. S. 623, 31 L. Ed. 205, 8 S. Ct. 273, as follows:

> " 'Indeed, as was said in Stone v. Mississippi, 101 U. S. 814, 816 . . . the supervision of the public health and the public morals is a governmental power, "continuing in its nature," and "to be dealt with as the special exigencies of the moment may require" and that "for this purpose the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself.' "
>
> ". . . For many years, everyone who has made or stored liquor has known that it was a kind of property which, because of its possible vicious uses, might be denied by the state the character and attributes as such, that legislation calculated to suppress its use in the interest of public health and morality was lawful and possible; and this without compensation".

The statutes of Illinois (Ill. Rev. Stat. 1969, ch. 43, par. 112(1)) provide that the local liquor control commissioner (respondent herein) has the power, function and duty "to revoke *for cause* all local licenses issued to persons for premises within his jurisdiction". Federal courts have consistently held that the absolute power to prescribe limitations on the sale of alcoholic beverages is considered a part of a State's administrative process. The discretion exercised in granting or revoking a liquor license is an exercise of ultimate sovereignity commonly referred to as the State's police power, and, as shown in the foregoing decisions, regulation of alcoholic liquor is considered and treated as in a category that might be classified as a "super police power" held by the States and their municipalities. (*Seidenberg* v. *McSorley's Old Ale House, Inc.*, 308 F. Supp. 1253, 1257 (S. D. N. Y., 1969); *Bordenelli* v. *United States*, 233 F. 2d 120, 125 (9th Cir., 1956.)

There is no existent inherent right to engage in the liquor business, and in Illinois the case-law and the statutes specifically provide that a liquor license is purely a personal privilege and does not constitute property. Ill. Rev. Stat.,

Ch. 43, par. 119 (1969); *Day* v. *Illinois Liquor Commission,* 39 Ill. App. 2d 281 (1963). Since the Illinois statute provides that the local liquor commissioner can authorize an inspection of the licensed premises and its books and records at any time *without the need of a search warrant* (Ill. Rev. Stat. 1969, ch. 43, par. 190) it is evident as decided by the Illinois Supreme Court in its well reasoned opinion, that the discovery by the authorities of the stolen items found in the basement of the tavern was sufficient to support the revocation of the license. Of necessity, when the instant petitioner acquired his license, he agreed to the laws and regulations controlling it, and, therefore, waived his right to privacy in the licensed promises. *Zap* v. *United States,* 328 U. S. 624, 628 (1946).

CONCLUSION.

For the foregoing reasons, it is respectfully requested that the Petition For Writ of Certiorari to the Supreme Court of Illinois be denied.

Respectfully submitted,

RICHARD L. CURRY,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Respondents.

EDMUND HATFIELD,
HOWARD C. GOLDMAN,
Assistant Corporation Counsel,
Of Counsel.

CERTIORARI DENIED N.C.R.